

**Department of Legislative Services**  
Maryland General Assembly  
2002 Session

**FISCAL NOTE**

House Bill 832                      (Delegate O'Donnell, *et al.*)  
Judiciary

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**Sentencing - Death Penalty - Murder in Violation of Protective Order**

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This bill specifies that, for sentencing purposes, it is an aggravating circumstance for murder in the first degree if the victim was a person: (1) eligible for relief under an existing temporary ex parte order or a protective order to protect the victim from abuse; and (2) whom the defendant murdered in violation of that order. The bill also expands the definition of "defendant," providing that for a murder committed in violation of a protective order, a defendant is not limited to a principal in the first degree.

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**Fiscal Summary**

**State Effect:** The bill is not expected to significantly affect governmental operations or finances.

**Local Effect:** None.

**Small Business Effect:** None.

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**Analysis**

**Current Law:**

Aggravating Circumstances In Death Penalty:

To be first degree murder, the murder must be:

- (1) a willful, deliberate, and premeditated killing;

- (2) committed by lying in wait;
- (3) committed by poison;
- (4) committed in the perpetration of, or attempt to perpetrate, arson in the first degree, in the burning or attempting to burn any barn, tobacco house, stable, warehouse, or other outbuilding; or
- (5) committed in the perpetration of, or attempt to perpetrate, a rape in any degree, first or second degree sexual offense, sodomy, mayhem, robbery, carjacking, armed carjacking, burglary in the first, second, or third degree, kidnapping, kidnapping a person under 16, the escape in the first degree from a correctional facility, or the manufacture or possession of a destructive device.

If the State seeks the death penalty and a defendant is found guilty of murder in the first degree, the court or jury, in determining the sentence, must first consider whether any of ten statutory aggravating circumstances exist to impose a sentence of death. If the court or jury does not find that one or more of the aggravating circumstances exist, a sentence of death may not be imposed. If the court or jury finds that one or more aggravating circumstances exist, then the court or jury must consider whether any specified mitigating circumstances exist. The court or jury then weighs whether the aggravating circumstances outweigh the mitigating circumstances. If so, the death sentence is imposed. If not, the sentence is either life imprisonment or life imprisonment without parole.

With the exception of defendants who engage or employ another to commit a murder and persons committing the murder of a law enforcement officer while in the performance of the officer's duties, only principals in the first degree (i.e., the person who actually committed the murder) are eligible for the death penalty.

#### Ex Parte Order and Protective Order:

If a court finds that there are reasonable grounds to believe that a person eligible for relief has been abused, the court may enter a temporary ex parte order and order the respondent:

- (1) to refrain from further abuse or threats of abuse;
- (2) to refrain from contacting, attempting to contact, or harassing the person eligible for relief;

- (3) to refrain from entering the residence of the person eligible for relief;
- (4) to vacate the home immediately, where the person eligible for relief and the respondent are residing together;
- (5) to remain away from the place of employment, school, or temporary residence of the person eligible for relief; and
- (6) to remain away from a childcare provider of a person eligible for relief.

The court may also award temporary custody of a minor child of the respondent and a person eligible for relief.

The temporary ex parte order is effective for up to 7 days and may be extended up to 30 days.

The protective order hearing must be held no later than seven days after the service of the temporary ex parte order. If the court finds by clear and convincing evidence that the alleged abuse has occurred, the court may grant a protective order, which may, in addition to granting the above relief:

- (1) establish temporary visitation with a minor child of the respondent and the person eligible for relief on a basis which gives primary consideration to the welfare of the minor child and the safety of any other person eligible for relief;
- (2) award emergency family maintenance as necessary to support any person eligible for relief to whom the respondent has a duty of support;
- (3) award temporary use and possession of a vehicle jointly owned by the respondent and the person eligible for relief to the person eligible if necessary for the employment of the person eligible for relief or for the care of a minor child of the respondent or the person eligible for relief;
- (4) direct the respondent to participate in professionally supervised counseling or a domestic violence program;
- (5) order the respondent to surrender to law enforcement authorities any firearm in the respondent's possession; and

- (6) order the respondent to pay filing fees and costs of proceedings relating to domestic violence.

All relief granted in the protective order is effective for the period stated in the order, not exceeding 12 months. A subsequent circuit court order pertaining to any of the provisions included in the protective order supersedes those provisions in the protective order.

**Background:** According to the Maryland Network Against Domestic Violence, in fiscal 2001, 68 people were killed as a result of domestic violence incidents in Maryland. Of the 68, 8 people committed suicide after committing murder. Information is not available on how many murders were perpetrated after the issuance of a temporary ex parte or protective order. The Administrative Office of the Courts does report that the District Court held 18,829 domestic abuse (ex parte and protective order) hearings during fiscal 2001. Statistics on the number of orders granted in fiscal 2001 are not yet available on a statewide basis. In the circuit courts, a total of 3,835 temporary ex parte hearings took place and 2,537 orders were granted. A total of 2,897 protective order hearings took place and 1,288 orders were granted.

**State Fiscal Effect:** There are several inherent difficulties in determining the effect of a particular aggravating circumstance. For instance, there is the potential overlap with other aggravating circumstances. In addition, prosecutors exercise discretion and have latitude in bringing such cases. There are also dissimilarities as to how different courts or juries will view the same presentation of facts with particular sets of circumstances.

In Maryland, since the death penalty was reinstituted on July 1, 1978, there have been 52 persons sentenced to death (representing the imposition of 78 death sentences). To date, three persons have been executed, all in the 1990s. There are currently 13 persons under sentence of death. All but one are held at the Maryland Correctional Adjustment Center (one person is in federal custody) at a cost of approximately \$4,000 per month. Four of these 13 inmates could be scheduled for execution in the near future since they may exhaust collateral challenges to their convictions and/or sentences during 2002. Appellate challenges to the propriety of the State death penalty sentencing proceeding could further delay the scheduling of the death penalty for these inmates, however.

The Division of Correction reports that 84 offenders were convicted of first degree murder in fiscal 2001 and none were sentenced to death. The division does not currently know how many of the 84 offenders committed were persons to whom the new aggravating circumstances would apply. It is assumed that the number of such instances would be small, and that any additional death sentences imposed pursuant to the bill would not have a discernable fiscal impact on the corrections system or the Judiciary.

The extent to which this additional aggravating circumstance would increase death penalty litigation is unclear. Accordingly, while it is conceivable that this bill could increase the workload and expenditures of the corrections or judicial system, including the Office of the Public Defender, any such increase cannot be reliably projected or quantified. In any event, the cost for the Public Defender to defend any additional death penalty cases arising from this bill is estimated to be \$75,000 per case, including the fees and costs associated with utilizing outside (panel) attorneys.

**Local Fiscal Effect:** The creation of any additional aggravating circumstance could conceivably increase costs for State's Attorneys, but only to the extent that the new provision actually creates additional death penalty cases by a particular State's Attorney. It is assumed the number of such instances would be small statewide.

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### **Additional Information**

**Prior Introductions:** This bill was introduced as HB 975 in the 2001 session and received an unfavorable report from the Judiciary Committee. This bill was introduced as HB 815 in the 2000 session and was unfavorably reported from the House Judiciary Committee. Similar bills were introduced during the 1998 and 1999 sessions. In 1999, HB 553 received an unfavorable report from the House Judiciary Committee. In 1998, HB 558 was withdrawn and SB 19 received an unfavorable report from the Senate Judicial Proceedings Committee.

**Cross File:** None.

**Information Source(s):** State's Attorneys' Association, Judiciary (Administrative Office of the Courts), Office of the Public Defender, Commission on Criminal Sentencing Policy, Department of Public Safety and Correctional Services, Maryland Network Against Domestic Violence, Department of Legislative Services

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